

Oil and Gas Leases: Applications: Generally – Oil and Gas Leases: Rentals

– Regulations: Generally

An oil and gas lease offer filed under the simultaneous-filing procedure in 43 CFR 3123.9 (1969) (now 43 CFR 3112 (1971)), accompanied with a personal check for the advance rental payment, is properly rejected and excluded from the drawing for noncompliance with subsection 3112.2-1(a)(2) of that regulation, and the offeror's act of typing the words "MONEY ORDER" on the check does not render the check a money order within the meaning of that regulation.

Administrative Practice

A land office practice if in contravention of an applicable regulation cannot create any rights in an applicant who tenders a personal check designated "MONEY ORDER" and is not afforded the benefits of such practice.

IBLA 70-417 :

E.S. 6551(Miss.)

JAMES W. McDADE

:
: Oil and gas lease
: offer rejected
:
: Affirmed

DECISION

James W. McDade has appealed to the Director, Bureau of Land Management, 1/ from an action by the Eastern States land office in returning to him his drawing entry card No. 139-7506, together with his filing fee and advance rental check for the reason that personal checks are not acceptable in payment of the advance rental.

The offer, which was filed during the October 1969 simultaneous filing period for parcel No. 24, pursuant to the posted list of lands available for leasing, was accompanied by Mr. McDade's personal check for the advance rental. The check had the words "MONEY ORDER" typed on it. The drawing entry card was excluded from the drawing in which the successful drawee was Rush B. Locke. The issuance of a lease, E.S. 6551, to Mr. Locke has been held in abeyance pending the final resolution of this appeal.

The Departmental regulation governing the issue here was 43 CFR 3123.9(c)(2) (1969), now 43 CFR 3112.2-1(a)(2) (1971) which reads in pertinent part:

The entry card must be accompanied by separate remittances covering the filing fee of \$10.00 and the first year's advance rental.

1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land, Management, to the Board of Land Appeals, effective July 1, 1970. Cir. 2273, 35 F.R. 10009, 10012.

The advance rental must be paid by cash, money order, certified check, bank draft or bank cashier's check. The filing fee may be paid by a similar remittance or by uncertified check.

The antecedent regulation required that each offer to lease must be accompanied by separate checks covering the filing fee and the advance rental payment, 43 CFR 192.43(c) (1959). It was amended by Cir. 2044, 25 F.R. 4808, June 1, 1960, to its current form except for subsequent recodification. The intent of this amendment was to provide for guaranteed remittances for the advance rental payments so as to enhance the orderly and expeditious administration of the Mineral Leasing Act, 30 U.S.C. § 181 et seq. (1964). 2/

The appellant asserts that each form of remittance set out in the regulation is a guaranteed remittance, if the Department confines itself to accepting forms of remittance which meet the legal definition for that form. He alleges that the Eastern States land office accepts, apparently as money orders, corporate checks, many of which are conditionally issued, and that the office states that these checks are money orders within the meaning of the regulation. He then contends that the land office is "undoubtedly confused" because each of the corporations in question has adopted a corporate name including the words "money order" therein, and the corporation designates the check a money order. He quotes the definitions for "money order" contained in WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (Unabridged, 1961); BLACK'S LAW DICTIONARY (4th ed. 1951); and BOUVIER'S LAW DICTIONARY (3rd rev., 8th ed.); all of which are limited to Post Office money orders; and argues that, since the conditional corporate checks cannot possibly be identified as falling within any of the definitions of a money order, it follows that the Department is waiving its requirement in connection with these filings for corporations. He concludes that this waiver must be extended to all those who claim it, including himself, as the

... check submitted with his drawing entry card was in no way conditional, and, as a matter of law, operated as an

2/ The purpose of the amendment is shown by correspondence in the Secretary's file entitled "MINERALS & FUELS - PErmits, Part 5 - Jan. 8, 1960 to May 25, 1960."

assignment of any funds on deposit with the bank upon which it was drawn. When presented to the bank, properly endorsed, the bank was under a legal duty to pay the check without more.

We need not rule on whether the land office is in error in allegedly accepting those corporate checks, as those facts are not before us. The case at hand must be decided on its own merits. Even assuming, without deciding, that the practice of land office acceptance of corporate money orders is as stated by the appellant, such a practice, if in contravention of an applicable regulation, cannot create any rights in an applicant who tenders a personal check marked "MONEY ORDER" As payment for advance rental. See Ralph J. Fuchs, A-27295 (March 27, 1956).

Under the regulations cited above, oil and gas lease offers accompanied by personal checks for payment of the advance rental must be rejected. See Chester F. Merriman, A-30033 (March 23, 1964), wherein the Department held that Merriman's offers, which were accompanied by personal checks, were properly rejected and excluded from the drawing even though the land office had cashed the checks and had the payment in cash. As to McDade's contentions in the present case, we note what the Department said in Merriman:

Whether or not appellant's offers were improperly excluded from the drawing depends upon whether or not the offers were subject to rejection. Appellant's argument, in effect, that the checks turned into cash upon presentment for payment, cannot be accepted. Although under accounting, commercial, and banking procedures the ultimate crediting of the amount of the check to the payee named therein is as tangible, assuming the check clears, as a cash payment, appellant's argument overlooks the clear language of the regulation. The regulation expressly relates to remittances which must accompany the offers and these remittances "must be made" in the particular form of payment specified therein. This express requirement upon the offeror, omitting personal checks for advance rental payments as an acceptable form, is clearly evident in

contrast to the filing fee, as the regulation provides that the fee can be paid "by a similar remittance or by uncertified check." There is reason for the requirement and the distinction, as experience in the handling of oil and gas offers has demonstrated to the Department a need for a more certain form of payment than personal checks for advance rental payments.

And, finally, the appellant's personal check was not converted into a money order merely by having the words "MONEY ORDER" written thereon.

Accordingly, McDade's offer was properly rejected and excluded from the drawing. The land office may proceed to issue the lease to the successful drawee, Rush B. Locke, provided his offer is proper in all respects.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 D.M. 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Anne Poindexter Lewis, Member

We concur:

Joan B. Thompson, Member

Frederick Fishman, Member.

